

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. CBA-2212-A; CBA-2212  
[S-535; CBA-2614]**

**PETITION OF FLOWER VALLEY BATH AND RACQUET CLUB, INC.**

RESOLUTION TO DISMISS SHOW CAUSE  
HEARING AND MODIFY SPECIAL EXCEPTION  
(Resolution adopted February 23, 2005)  
(Effective Date of Resolution: April 12, 2005)

The Board of Appeals granted Case No. CBA-2212 to the Flower Valley Bath and Racquet Club, Inc. on July 11, 1967, to permit the construction and operation of a community swimming pool. In Case No. CBA-2614, effective June 10, 1969, the Board granted a modification to permit the operating season to be extended from May 1 to October 1; to authorize a total of 12 special activity nights divided between the teenagers and adults, and to permit food to be catered to the club on those nights and for a sign to be erected on the bathhouse. In Case No. S-535, effective February 9, 1977, the Board granted a modification to permit the addition of two tennis courts, a fence, and trees to the existing special exception. In Case No. CBA-2212-A, on April 25, 1997, the Board granted a modification to permit the construction of two shade pavilions.

On February 23, 2005, the Board of Appeals convened a Show Cause Hearing on the special exception. Malcolm Spicer, Esquire appeared on behalf of the Montgomery County Department of Permitting Services. He called Stanley N. Garber, a Zoning Investigator with the Department, as a witness. William Francis Xavier Becker, Esquire appeared on behalf of the Flower Valley Bath and Racquet Club ('Flower Valley'). He called as witnesses Cindy Kirchner, Bruce Haase and Ray Ng.

**FINDINGS OF FACT**

1. The subject property contains approximately 4.1767 acres, located on "Parcel "A" Block J, bounded by Norbeck Road, Columbine Way, Flower Valley

Drive and Carrolton Road, in the Flower Valley Subdivision, at 4250 Flower Valley Drive, Rockville, Maryland 20853, in the R-200 Zone.

2. The Show Cause Hearing was based upon a memorandum, dated June 25, 2002, from Mr. Garber to the Board, and upon Notices of Violation issued by Mr. Garber to the Flower Valley Bath and Racquet Club, dated November 14, 2001 and August 21, 2002. The violations noted are as follows:

**Notice of Violation of November 14, 2001** [Exhibit No. 21(a) and (b)]:

“Case No. CBA-2212 –

- 1) Missing along property line tight evergreen plantings 3 to 4 feet on center;
- 2) Missing non-glare type fixtures and shields for such fixtures;
- 3) Light fixtures are aimed at other locations rather than pool area;
- 4) Facility is not secured to prevent cars or trespassers from entering premises;
- 5) Not maintaining property as described in condition No. 13 [“The petitioner shall provide maintenance to the grounds and buildings throughout the year, including leaf collection and trimming of shrubbery.” Opinion of July 11, 1967].

Case No. S-535 –

- 1) Tennis courts adversely affect adjoining property owners by water run-off;
- 2) Tennis court’s gazebo has electrical lighting fixture and other devices where fed from shed;
- 3) fence is within 11 feet from property line rather than 35 feet;
- 4) tennis courts used prior to 7:00 a.m.;
- 5) No annual reports concerning statement of operations to the Department;

Case No. CBA-2212-A –

- 1) Shade pavilion has lighting without Board of Appeals approval and electrical installation is without permits on many branch circuits and devices.”

**Notice of Violation dated August 21, 2002** [Exhibit No. 22]:

“Change the wording in the Notice of Violation dated 11-14-01 on Part 2 of 2 under #3 which states: “fence is within 11’...” to: “Fence is within 20+ feet from property line rather than 35’.

Modify the special exception for tennis courts surface where the elevation of the courts were raised and a water system installed for the new type of court.

Move the fence 35' away from property line. This new surface will need modification approval since the level was raised. The water system for this new surface affects adjoining property owners due to runoff and requires an engineer's corrective measure/courts of action. All other violations in the 2 part notice dated 11/14/01 remain in effect."

3. In its written Request for Clarification/Modification with Exhibit Inventory [Exhibit No. 28], and in testimony at the Show Cause Hearing, Flower Valley addressed the violations and requested modification of the special exception for approval of:

1) A revised special exception site plan, depicting current as-built conditions [Exhibit No. 29(b)];

2) Location of the two existing tennis courts at the front of the property positioned so that the front is 29.7 feet from the adjoining property line, while the rear of the tennis courts are 30.25 feet from the adjoining property line [Exhibit Nos. 25/5 and 29(b)];

3) The catch basin installed to address water run-off from the tennis courts;

4) The existing planting barrier – pine trees – between the tennis courts and the adjoining property owners;

5) Securing the facility by placement of locked chains across the east and west entrance to the driveway fronting the club house outside of the season;

6) Permission to leave the parking lot adjoining the tennis courts without a locked chain to allow use by cable installation concerns; county school bus turn around; off-street parking by members using the tennis courts during spring and fall;

7) Use of the tennis courts from April 1 to October 31;

8) Hours of operation –

Fridays, Saturday, Sundays, holidays – until 9:30 p.m.

Operation on Wednesday evenings for B meets beyond 9 p.m.

9) The number, type and location of on-site lights; in addition the club contracted with a licensed electrical contractor to bring the lighting to code standards [Exhibit Nos. 25/10,11, 12 and 13 and Exhibit No. 28 Q.].

4) At the Show Cause Hearing Mr. Garber testified that Flower Valley had corrected the violations pertaining to maintenance of the subject property and to glare from site lighting fixtures. Mr. Garber agreed that the existing planting/screening of mature pine trees is sufficient, and expressed his support for Flower Valley's request for modifications to address the other violations.

## **CONCLUSIONS OF LAW**

1. Section 59-G-1.3(e)(6) of the Zoning Ordinance provides that in the context of a Show Cause Hearing, the Board of Appeals "by the affirmative vote of at least 4 members, may reaffirm or revoke the special exception, or amend, add to, delete or modify the existing terms or conditions of the special exception."

2. The Board finds that the special exception holder has taken significant steps to address the violations. The Board **adopts** Exhibit No. 29(b) as the current special exception site plan. The Board dismisses the Show Cause Hearing and **grants** the requested modifications, with the following clarifications and conditions:

1) Flower Valley Bath and Racquet Club shall submit annual reports, signed by the president to the Board of Appeals;

2) Use of the tennis courts will be from April 1 to October 31 and after that, both driveway entrances shall be locked with chains. There shall be no use of the parking lot by other than club employees or members;

3) The tennis courts will be used no earlier than 7 a.m. and cannot be lighted;

4) Hours of operation for the swimming pool will be: generally 9 a.m. to 9 p.m.; summer swim team practice can begin at 7:30 a.m. on weekdays; four B team meets per year are permitted to go as late as 10:00 p.m.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 12<sup>th</sup> day of April, 2005.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.